

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

USA LENDING GROUP, INC.,

Plaintiff,

v.

MIKE AHMARI,

Defendant.

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Civil Action No. 1:17-cv-00386-SS

MOTION TO CORRECT FINAL DEFAULT JUDGMENT

Plaintiff, USA Lending Group, Inc. (“USA Lending”), pursuant to Fed. R. Civ. P. 60 (a), moves to correct the Final Default Judgment entered against Defendant, Mike Ahmari (“Ahmari”), to correct the numerical description of the 1-800 USA-LEND toll-free number in the judgment to reflect the correct numerical description of the toll-free number at issue, i.e. 1-800-872-5363.

PROCEDURAL HISTORY

1. USA Lending filed suit against Ahmari, a former officer and employee of USA Lending, for breach of fiduciary duty arising from Ahmari’s wrongful registration of the www.usalend.com domain name and 800-USA-LEND (800-872-5363) toll-free number (collectively, the “Property”) in his name, the name of his competing company, and/or under an assumed name. Despite being properly served with Summons and a copy of the Complaint, Ahmari has failed to answer or otherwise appear in this action. The Clerk of the Court entered default against Ahmari on June 13, 2017. [Dkt. #6]. The Court entered a Final Default Judgment against Ahmari and in favor of USA Lending on September 1, 2017 (the “Judgment”), declaring that USA Lending is the legal owner of the www.usalend.com domain name and the 800-USA-

LEND toll-free number. [DKT. #10]. The numerical description of the 800-USA-LEND toll-free number in the Judgment is incorrect. The toll-free number should be 800-872-5363 (800-USA-LEND), instead of the 800-827-5363 (800-UAS-LEND) listed in the Judgment. The error arising from the transposed digits in the toll-free number was inadvertent and one that can be corrected under Rule 60(a), Fed. R. Civ. P.

ARGUMENT AND BRIEF OF AUTHORITIES

2. Rule 60(a) permits correction of clerical mistakes in judgments or other parts of the record as well as the correction of errors arising from oversight or omission. Fed. R. Civ. P. 60(a); see also *Romero-Rodriguez v. Gonzales*, 488 F.3d 672, 677 (5th Cir. 2007). The rule may be utilized to correct mistakes by parties as well. See *Warner v. Bay St. Louis*, 526 F.2d 1211, 1212 (5th Cir. 1976); *Continental Cas. Co. v. Little*, 152 F.2d 728, 729 (5th Cir. 1946); and *Pattiz v. Schwartz*, 386 F.2d 300, 303 (8th Cir. 1968). A clerical error resulting from transposing digits in a number can be corrected under Rule 60(a). See *Esquire Radio & Electronics, Inc. v. Montgomery Ward & Co., Inc.*, 804 F.2d 787, 795-96 (2d Cir. 1986). A clerical error arising from transposing digits in the toll-free phone number is the type error that occurred in this case.

3. The evidentiary record established that the toll-free telephone number Ahmari obtained for USA Lending is 800-872-5363 or 800-USA-LEND. See Motion for Default, Exhibit A-9 [Dkt. #7-10]. In its Motion for Default Judgment, USA Lending prays for entry of “a default judgment against Defendant, Mike Ahmari, declaring USA Lending the legal owner to all rights in the domain name, www.usalend.com, and the toll free number 800-USA-LEND (800-872-5363) which were to have been acquired by Ahmari for the benefit of USA Lending during period of time Ahmari was acting as its agent and representative...”. [Dkt. # 7 at p.10]. The Judgment, however, inadvertently transposed the fifth and sixth digits (the “7” and “2”) of the

phone number and inaccurately lists the toll-free number as 800-827-5363 (which does not translate to 800-USA-LEND). The correct numerical description of the toll-free telephone number at issue is 800-872-5363 (which translates to 800-USA-LEND). The mistake in the numerical description of the 800-USA-LEND toll-free number results in an inconsistency between the text of the Judgment and the district court's intent when it entered the judgment to declare USA Lending the owner of the 800-USA-LEND (800-872-5363) toll-free number obtained by Ahmari when he was an agent and representative of USA Lending.

4. Clerical mistakes and errors of oversight or omission of this type may be corrected at any time. See *Sartin v. McNair Law Firm PA*, 756 F.3d 259, 268 (4th Cir. 2014). The Court may do so with or without notice. See Rule 60(a), Fed. R. Civ. P.; *Holzmeyer v. Walgreen Income Protection Plan for Pharmacists & Registered Nurses*, 46 F.Supp. 3d 865, 870 (S.D. Ind. 2014). Notice is not necessary in the present case because the correction may be made upon that which appears in the record itself and no extrinsic evidence is necessary. See *U.S. v. 706.98 Acres of Land in Montgomery County, Ark.*, 158 F. Supp. 272, 275 (W.D. Ark. 1958)(correction allowed without notice where all papers in the condemnation of land reflected that it was located in Range 27, but the judgment reflected Range 26).

PRAYER

For the reasons stated above, USA Lending Group, Inc. prays that the Court correct the clerical error in the Final Default Judgment relating to the numerical description of the toll-free 800-USA-LEND telephone number to reflect the correct numerical description of 800-872-5363, in order to accurately reflect the intent of the Court's judgment as supported by the evidentiary record in the case, and that USA Lending Group Inc. have and recover such other and further relief to which it may show itself entitled.

Respectfully submitted,

By: /s/ James G. Ruiz

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